

1 Winston Kemper B-64476  
2 P.O. BOX 8500  
3 Coalinga, Ca. 93210  
4 P.V.S.P. B-5 129

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RICHARD J. WILKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HABEAS CORPUS

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8 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

9  
10 Winston Kemper  
11 Plaintiff

12 vs.

13 James Yates  
14 Warden

NO. C 07-4666 JSW (PR)

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19  
20 I had one video interview with Public Defender Brown prior to trial. I am  
21 sure I mention my attempts to vindicate myself of this crime through  
22 Officer Davidson, whose none appearance at my trial went unexplained in  
23 violation of Ohio v. Roberts my other exculpatory statements were  
24 9-29-03 see attached parole Hearing 9-29-03 comment and October advice by  
25 attorney advising me to be silent. I think for these reasons this con-  
26 viction should be reversed under the Griffin - Doyle Rule, see attached  
27 page 648. PERJURY UNDER P.C. 118 a is the only way of describing alledged  
28 victim David Harris testimony in this case. A full evidentiary hearing

1 Concerning this charge of perjury is requested. Attached pages 11,  
2 12, and 13 prove fact there was no investigation and contrary to  
3 Public Defender Browne's position I should have been given a 1538.5  
4 and/or 995 hearing, to prove the brown coat was really mine by  
5 diagonal house witness and next door neighbor. This point is  
6 proven by jury request Exhibit I, "Ascertaining true ownership of  
7 coat." Who left duffle bag p. 11, line 20 is an issue requiring  
8 an evidentiary hearing most relevant to 11-19-03 amended complainnt.  
9 (Millie, Michael, Reggie, Debra, or K.C. left the duffle bag?)

10 David Harris' perjury is at least 3 fold. 3 instances  
11 mentioned here are Police Report statements "Harris, 'I turned my  
12 head and he ran out back.'" During my trial he stated, "I was  
13 casually walking through the house and I saw his profile when he  
14 left the house." This perjury went unchallenged by defense  
15 attorney (ineffective counsel). (Police Report and Trial p. 133  
16 attached). Route allegedly took, see police report.

1 the Public Defender Department never investigated and here I am an actual and  
 2 factual innocent person incarcerated for life. No explanation given for  
 3 Officer Davidson's no appearance at trial in violation of Roberts v. Ohio,  
 4 Crawford v. Washington. I remember hearing the Judge, Prosecution, and Public  
 5 Defender discussing dubing Dispatcher description of suspect. They have re-  
 6 fused to give my September 29, 2003 tape back, exhibit (2) 602, in which other  
 7 people in backyard were mentioned. I have requested a full evidentiary hear-  
 8 ing at every stage of state review of this appeal which was not granted in  
 9 violation of Taylor v. Maddox, 366 F.3d 992 (9th Cir.)

10 The charge of 5,000 dollars (five thousand) for restitution by trial  
 11 judge was arbitrary, ridiculous, and contrary to P.C. 1202.4(F). See attached  
 12 Judge and District Attorney reports..."Loss, repair and replacement of broken  
 13 door frame." This charge also was in violation of the 14th Amendment "equal  
 14 protection clause" and 8th Amendment "cruel and unusual punishment."

#### 15 Vindictive Prosecution

16 The explanation given by the prosecutor for submitting an amended com-  
 17 plaint violated the criteria established in U.S. v. Goodwin, 102 S.Ct. 2485  
 18 ("an individual may not be punished for exercising a protected statutory  
 19 constitutional right.") The amended complaint filed by the prosecutor was a  
 20 due process violation of my rights and the direct result of my seeking Marsden  
 21 Proceedings on November 14, 2003.

22 It is well established law that to show 'vidictive prosecution' the two  
 23 prongs that must exist, are one establishment of a prosecutorial stake, and  
 24 two the reasonableness of the extra charge. In the instant case 1. The stake  
 25 on the prosecutor's part was Judge Reardon's offer in exchange for a guilty  
 26 plea on my part, and 2. An objective view of the prosecutor's explanation  
 27 would have found it unreasonable, unsustainable, and whimsical.

28

STATE OF CALIFORNIA )  
COUNTY OF FRESNO )  
\_\_\_\_\_ )

(C.C.P. SEC. 446 & 201.5; 28 U.S.C. SEC. 1746)

I, Winston Kemper declare under the penalty of perjury that: I am the \_\_\_\_\_ in the above entitle action; I have read the foregoing documents and know the contents thereof and the same is true of my own knowledge, except as to matters stated therein upon information, and belief, and as to those matters, I believe them to be true.

EXECUTED THIS 2 DAY OF September, 2008 AT PLEASANT VALLEY STATE PRISON, COALINGA, CALIFORNIA 93210

(SIGNATURE) Winston Kemper  
(DECLARANT/PRISONER)

**PROOF OF SERVICE BY MAIL**

(C.C.P. SEC 1013 (a) & 2015.5; 28 U.S.C. SEC. 1746)

I, Winston Kemper, am a resident of PLEASANT VALLEY STATE PRISON, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA. I am over the age of eighteen (18) years of age and I am a party of the above-entitled action. My address is: P.O. BOX 8500, COALINGA, CALIFORNIA 93210.

ON September 2, 2008, I SERVED THE FOREGOING:  
SUPPLEMENT SHEETS

**(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)**

ON THE PARTY(S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, IN A SEALED ENVELOPE, WITH FIRST CLASS POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN THE DEPOSIT BOX SO PROVIDED AT PLEASANT VALLEY STATE PRISON, COALINGA, CALIFORNIA 93210.

I SERVED THE FOLLOWING PERSON (S) ADDRESSED BELOW:

U.S. DISTRICT COURT  
450 Golden Gate Ave  
San Francisco, Ca. 94102

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: 9-2-, 2008, Winston Kemper  
(DECLARANT/PRISONER)

SUPPLEMENT SHEETS

CASE # 07-4666 JSW (PR)

1 The enclosed Three Page Front Sheets  
2 and about 41 Pages of exhibits were  
3 Part of original appeal I sent this  
4 court 8-30-07. The court rejected  
5 that appeal (excessive papers). I'm  
6 resubmitting these 3 Sheets be-  
7 cause they are identical to the ones  
8 I raised through out my appeal.  
9 Emphatically Page 3, lines 1-9.  
10

11 Thank you  
12 Winston Kemper  
13 9-2-08  
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